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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL.,
Petitioners.

v.

SAX ENTERPRISES, INC., ET AL.; HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinions and orders of the various judges of the Circuit Court for Dade County in these cases are unreported. The opinions of the Florida Supreme Court are all reported. They are as follows:

1. *Sax Enterprises, Inc.* v. *Hotel Employees Union,* 80 So. 2d 602 (1955) (R. 16), reversing the denial of temporary relief by the Circuit Court (R. 10) in the Saxony case.

2. *Boca Raton Club* v. *Hotel Employees Union,* 80 So. 2d 680 (1955) (R. 272, 550), similarly reversing, per curiam, similar refusals in six other cases, including the Sans Souci (R. 89) and the Sherry Frontenac (R. 534).

3. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 81 So. 2d 731 (1955) (R. 502), granting supersedeas as to the portion of the Circuit Court order in the San Marino case (R. 434), providing for a secret ballot election.

4. *Boca Raton Club* v. *Hotel Employees Union,* 83 So. 2d 11 (1955) (R. 277, 577), reversing, in the six cases covered in the second opinion above, the action of the trial courts

vacating temporary injunctions after hearing (R. 101, 546).

5. *R. S. Levy* v. *Hotel Employees Union,* 83 So. 2d 852 (1955) (R. 388), reversing the denial (R. 379) of temporary relief in the Versailles case.

6. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 84 So. 2d 583 (1956) (R. 507), reversing the order for election (R. 434) in the San Marino case.

7. *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415 (1957), reprinted in Appendix A to this brief.

8. Separate but identical per curiam affirmances of twenty-two cases, including the twelve on review here, on the authority of the *Fontainebleau Hotel Corp.* case. These per curiam opinions (R. 57, 295, 399, 520, 574, 657, 801, 823, 878, 908, 1006, 1090), are reported in 93 So. 2d 583-600.

JURISDICTION

The judgments of the Supreme Court of Florida in each of twelve cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. On August 12, two petitions for certiorari, covering all twelve cases were filed. They were granted, and the cases consolidated, on December 16, 1957. (R. 1095; 355 U. S. 902). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§ 447.01-447.15, provides in pertinent part as follows:

> Section 1. Policy. (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use.

The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 3. Employee Rights. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. Prohibited Acts. It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) provide as follows:

Sec. 7. Employees shall have the right to self-organi-

zation, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * * *

Sec. 10. (a) The Board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

QUESTIONS PRESENTED

1. Whether a state may constitutionally establish specific preconditions for the use of pickets as a method of communication (and enjoin all picketing not meeting those preconditions as picketing for an "unlawful purpose") where:
   (a) the objective sought to be achieved by the pickets is not unlawful or contrary to any policy of the state,
   (b) the picket signs are truthful,
   (c) the picketing is peaceful.
2. Whether, under the same circumstances, the state may

constitutionally prohibit all other forms of publication as to the facts of a labor dispute.

3. Whether by the course of its decisions here the Florida court denied petitioner due process and the equal protection of the laws.

4. Whether Florida may prohibit peaceful picketing protected by the National Labor Relations Act in an industry affecting commerce over which the National Labor Relations Board refuses to exercise jurisdiction.

STATEMENT OF THE CASE

INTRODUCTION

These are 12 of 22 separate cases which were decided, in identical per curiam opinions, by the Supreme Court of Florida on March 15, 1957. Each opinion affirmed, on the authority of the Florida court's prior opinion in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d, an injunction against peaceful picketing by the union, petitioner here, of a Miami or Miami Beach hotel. In 9 of the 22 cases, the underlying dispute between the employer and the union has been settled by the negotiation of a collective bargaining agreement. Review was sought and granted, in two petitions for certiorari, in 12 of the remaining cases.

These cases were briefed together in the Supreme Court of Florida. They present, we believe, identical issues. They are, however, distinct cases. There were 12 separate records in the Supreme Court of Florida. The findings of the trial courts and the injunctive orders issued are not identical in each case. And in some cases there have been repeated reviews by the Florida Supreme Court of interlocutory trial court orders.

The result is, of course, a large, complex and cumbersome record in which it is, unfortunately, very difficult to find

one's way.[1] More to the point, it is also difficult to present an easily understandable description of what happened in each of the 12 cases, since they did not proceed either simultaneously or consecutively but were interspersed, with no less than seven separate opinions of the Florida Supreme Court having been issued prior to the final affirmances now on review. In our petitions for certiorari we met this problem by describing in detail only 4 of the 12 cases, specifying with respect to the others only what we believed to be the relevant differences. Since counsel for respondents apparently believe, although they have never specified the basis for that belief, that all 12 cases must be considered by the Court, we have abandoned that approach here.

In the statement which follows, therefore, we will attempt to show the history of the entire litigation in chronological sequence, which is the way we think is most comprehensible. Since this necessarily involves jumping about between cases, we have also included, as Appendix B to this brief, a chart of the litigation chronology, with complete record references, showing what happened when in each case, omitting only what we believe are non-essentials. On the chart and in this statement, the cases will not be referred to by their formal captions, which are in themselves somewhat confusing, but by the name of the hotel, as follows:

Name of Respondent	*Name of Hotel*	*Record Pages*
Sax Enterprises, Inc.	Saxony	1-78
Leevlans Corp.	Sans Souci	79-296

[1] In an effort to conserve the time of counsel and of the Court, and to minimize the potential confusion created by this situation, we sought, both prior to the filing of the petitions herein, and again after certiorari was granted, to enter into a stipulation with counsel for the various respondents, pursuant to which only a representative few of the 12 cases would be presented for review, the others to abide by the result. Principal counsel for the respondents appeared to agree in principle on both occasions but failed to execute the proposed stipulations. No response was filed to the petitions for certiorari.

Harry Levy, et al.	Sherry Frontenac	523-575
Stuyvesant Corporation	Lombardy	577-658
Abe Allenberg, et al.	Miami Colonial	659-802
A. H. S. Corporation	Nautilus	803-824
Hotel Delmonico, Inc.	Delmonico	825-879
Saul Cohen, et al.	President Madison	881-911
Morris Lansburg & Daniel Lifter	Robert Richter	913-1044
Martinique Hotel, Ind.	Martinique	1045-1093
R. S. Levy, Daniel Lifter, et al.	Versailles	297-402
Thomas Jefferson, Inc.	San Marino	403-521

BACKGROUND

In February, 1955, the petitioner, Hotel Employees Union, Local 255, began a campaign to organize the employees of the resort hotels in Miami and Miami Beach, Florida. Because of the low wages, long hours and poor working conditions at these hotels (see, e.g., R. 39, 41, 143, 153, 175, 188, 191) the campaign met with considerable success. The question then was whether the hotels would recognize and negotiate with the union.

The usual procedure of petitioning the National Labor Relations Board for an election and certification did not appear to be available to the union, in view of the NLRB's announced policy of refusing jurisdiction over cases in the hotel industry, irrespective of their impact on interstate commerce.[2] Nor, for the same reason, would unfair labor practice charges be processed by the Board. No similar procedure was available under the law of Florida. Although the law of Florida contains, in Section 447.03, a provision comparable to Section 7 of the Wagner Act, it provides no

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[2] This refusal by the Board to exercise its jurisdiction in this very controversy is now before this Court in No. 21, *Hotel Employees Local No. 255* v. *Leedom*, certiorari granted, No. 662, October Term, 1957, 355 U. S. 951.

machinery by which elections can be conducted nor unfair labor practices prosecuted.

Early in March the union therefore sought, by conferences with the representatives of the individual hotels which it had organized and of the Miami Beach Hotel Association, to establish a procedure by which the union could establish, by secret ballot, its right to bargain collectively for the employees of the various hotels (R. 40). When no agreement was reached the union addressed a letter to the Association requesting a conference. No answer was received. Copies were mailed to each of the hotels here involved. No answer was received. Copies of the letter were published in the Miami newspapers. (R. 40-44).[3] Finally, beginning on April 13, 1955, the union called a strike at nine hotels. Of those nine only three are now before this Court, the Saxony, the Sherry Frontenac and the Sans Souci. The strike began at the Saxony on April 13, at the Sherry Frontenac on April 16 and at the Sans Souci on April 17. The employers promptly replaced the striking workers (R. 261). The strikers, in turn, began to picket.

THE FIRST LITIGATION PHASE: ACTION BY THE TRIAL COURTS ON THE APPLICATIONS FOR TEMPORARY RELIEF (APRIL-MAY 1955)

Saxony, Sans Souci and Sherry Frontenac

The employers filed complaints for injunctions against the picketing (R. 1, 79, 524). The complaints were substantially identical. After identifying the plaintiffs they alleged that "one or two carpet-bagger labor organizers arrived in Miami Beach for the purpose of stirring up labor

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[3] The record reference is to the undisputed affidavit in the Saxony case. Substantially the same requests for negotiation were made in the other cases, as shown by affidavits or testimony, although the sequence was not always the same. (R. 217-239, 323, 419, 479, 606-623, 769, 859-862, 986, 1074.) See also the description of the history at the individual hotels at which picketing began during the third phase, at pp. 19-23 below.

discord by creating a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union."

According to the complaints, the efforts of the two "carpet-baggers" in enlisting membership were a failure, but the organizers attempted to compel the owners of the Miami Beach hotels to recognize the union nevertheless in order to enable the Union to procure membership among the employees. When the employers refused to comply with these demands, the complaints alleged, the union placed picket lines in front of the hotels, carrying signs alleging that the hotels had refused to negotiate with the union, which signs, it was alleged, were false. In addition, said the complaints, the union had called meetings of the employees of the hotels and induced a minority of them to strike and cease work. The complaints also alleged instances of picket line coercion and intimidation of the remaining employees by the defendants and their "henchmen," in an effort to prevent such employees from going to work. (R. 3, 83, 525.)

The relief requested by the complaints was (1) an injunction against the picketing and (2) an injunction against "advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or the plaintiff corporation, or its officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise." (R. 8, 87, 532.)

Of the nine cases, seven—including three now before this Court—were heard together before four judges of the Circuit Court of Dade County, Florida, on April 28-30. The cases were not consolidated, however, each judge retaining jurisdiction over the particular case which had been assigned to him (R. 11-13).

In all of the cases two major questions seemed to be pre-

sented at the hearing for temporary injunctive relief: (1) whether there was a sufficient showing of violence or intimidation to warrant an injunction, and (2) whether, if the picketing was peaceful, it was nevertheless unlawful under some "unlawful purpose" doctrine. Violent picketing could, of course, be enjoined. With respect to the second question, the law of Florida as of the date of the hearings was that picketing for the purpose of coercing an employer to coerce his employees to join a union was unlawful.[4] On the other hand, the employer's belief, however reasonable, that this was the purpose of the picketing was insufficient, if there was in fact a different purpose.[5] Picketing by non-employees for organizational purposes,[6] or by a union representing only a minority of the employees [7] was lawful. It was clear Florida law that the publication of facts concerning a labor dispute, whether or not true and irrespective of whether a "bona fide labor dispute" existed, could not be restrained in any manner.[8] Finally, as stated by the Florida Supreme Court in *Hotel & Restaurant Employees* v. *Cothron,* 59 So. 2d, 366, 369 (1952), "there is no rule, regulation or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law."

These cases seemed to establish the principles to be applied at the hearing on the applications for temporary injunctions. In accordance with those principles, the trial judges addressed themselves first to the evidence of violence and coercion. They found that, on the evidence shown, there

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[4] *Treasure, Inc.* v. *Hotel Employees Union,* 72 So. 2d 670 (1954); *International Typographical Union* v. *Ormerod,* 59 So. 2d 534 (1952).

[5] *Hotel & Restaurant Employees* v. *Cothron,* 50 So. 2d 366 (1952).

[6] *Whitehead* v. *Miami Laundry Co.,* 160 Fla. 667, 36 So. 2d 382 (1948).

[7] *Johnson* v. *White Swan Laundry,* 41 So. 2d 874 (1949).

[8] *Moore* v. *City Dry Cleaners and Laundry,* Fla. 41 So. 2d 865 (1949).

was no basis in fact for enjoining pickets on such ground in any of the seven cases.[9] With respect to the claim that the picketing could be enjoined on the ground that it was for the purpose of coercing the employers to coerce their employees to join the union the judges expressed the opinion that this raised the major question in the cases and that no ruling should be made until answers had been filed and further testimony taken (R. 14-15). Accordingly, the applications for temporary relief were denied, but without prejudice.

THE SECOND PHASE: REVERSAL BY THE SUPREME COURT OF FLORIDA (MAY 27-JUNE 1, 1955)

Saxony

Instead of waiting for answers to be filed and permitting the "unlawful purpose" question to be decided by the trial courts, the plaintiffs sought review in the Supreme Court by writ of certiorari. The first order had been entered in the Saxony case on May 5 (R. 10). On May 27, 1955, the Supreme Court, reversing the trial court, directed that a temporary restraining order issue in that case (R. 16).

The Supreme Court upheld the trial court's finding as to the absence of violence (R. 17). It went on, however, to hold that, in the absence of an answer or evidence to the contrary, the allegations of the sworn complaint should have been accepted as true (R. 18). After quoting the complaint the Court said that it was clear that, if the allegations were true, "the real purpose of the picketing was to force the employees of the Saxony Hotel to designate the union or the individual respondents as their bargaining agent, and to coerce said hotel owners to sign contracts with the union and to use said contracts as a basis to compel the employees of

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[9] The other two cases pending at the same time were heard separately and injunctions were issued based on a finding that the picketing was set in a background of violence (R. 65). These cases are not here for review.

the hotel to become members of the respondent union" (R. 21).

Picketing for such a purpose was, of course, unlawful under the prior decisions of the Florida court. If Florida law required the issuance of a temporary restraining order on the bare allegations of a complaint, despite the fact that at a hearing had been held and no evidence in support of these allegations was produced, the reversal of the trial court created no new labor law, however striking the rule of equity procedure it prescribed.

But the Supreme Court did not content itself with reversal on this ground. In the course of its opinion it set up, by way of dicta, what appeared to be entirely new standards for lawful picketing. In order for picketing to be lawful, the Court said, the union "must establish that the employees have chosen it as their representative . . . must also inform the employer of the object to be accomplished by the picketing," and must "afford to the employer a fair opportunity to engage in negotiations" (R. 18). Finally, said the Court, the picketing must convey "information concerning the *facts* of a labor dispute." (R. 20, emphasis in the original.)

The trial court on May 28, the very next day, issued the preliminary injunction which the Supreme Court directed. That injunction, in paragraph 1, enjoined all picketing at the Saxony and then, in the succeeding paragraph, went on to enjoin the defendants from publishing or causing to be published "any statements to the effect that a strike, walk-out or cessation of work is in effect at the Saxony Hotel, or that the plaintiff refuses to negotiate with defendants or affiliated organizations as the collective bargaining agent of the employees of the Saxony Hotel" (R. 32).

Sans Souci and Sherry Frontenac

While the Saxony case was pending in the Supreme Court, petitions for certiorari had also been filed in the six other cases in which temporary relief had been denied, including

the Sans Souci and Sherry Frontenac. The union, in the meantime, had filed its answers in these cases (R. 90, 535). When the Saxony opinion appeared the union therefore made an effort to meet the Supreme Court's ruling that temporary restraints must issue unless the plaintiffs' allegations were disproved, and had the cases set for further hearing on June 4. The Supreme Court was notified of this fact by telegram on June 1 and asked to withhold its order on the petition for certiorari. Its response was (as stated to the trial judge by counsel for the plaintiffs in a later hearing) "a hurried meeting by the court in which they directed the clerk to wire your Honors to enter those injunctions" (R. 111). A per curiam opinion was issued on June 1 covering all six cases. It granted certiorari as to the part of the trial courts' rulings which deferred decision on the lawful purpose question and directed that temporary restraints be issued (R. 272, 550).

On June 2, in obedience to the court's telegrams, preliminary injunctions were issued by the trial courts. The injunctions, like those in the Saxony case, restrained not only picketing but also any publication of the fact that a strike was in effect or that the plaintiff hotels had refused to negotiate with or recognize the union (R. 99, 544). This additional restraint was not inserted idly. In the petitions for certiorari the plaintiffs had complained of the fact that advertisements had been placed in newspapers in New York, Chicago, St. Louis and Cincinnati concerning the hotel strike (R. 269). The union was now apparently enjoined from placing any more of such advertisements.

THE THIRD PHASE: FURTHER HEARINGS ON THE BASIS OF THE SAXONY DECISION (JUNE-OCTOBER 1956)

Sans Souci and Sherry Frontenac

Answers had been filed in these cases on May 9. Those answers admitted the strike and the picketing but denied the other material allegations of the complaints. They af-

firmatively pleaded that the unions had sought to bring about negotiations with the plaintiffs, but the plaintiffs had refused to enter into any such negotiations, that the unions had invited the plaintiffs to hold an election by secret ballot under any fair and impartial authority in order to demonstrate the good faith of the defendant union's assertion that it represented a majority of the employees and that the picketing complained of became necessary only because the plaintiff had refused such requests. The union specifically alleged, as an affirmative answer, that the injunctive orders requested by the plaintiffs would deprive the defendant union and its members of their constitutional rights of free speech, contrary to the Constitution of the United States and of the State of Florida (R. 94-95, 539-540). By supplemental answer dated May 27 the union also urged that the requirements of Section 447.09(3) and (4) of the Florida statutes were unconstitutional under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States (R. 97, 542).[9a]

On June 2, the same date that the preliminary injunctions were issued, the union filed motions to vacate the temporary orders in all of the six cases which the Supreme Court decided on June 1. The motions set forth that the union was "ready, willing and able" to make immediate showing of the matters required to be heard by the Supreme Court's Saxony opinion. (R. 100, 545).

The motions came on for hearing on June 4. The six cases were heard together (R. 104-262). At the hearing the union proceeded to prove what it had said in its motions it would prove. It put on the stand many of the individual employees who had designated the union as their bargaining representative (R. 120-121). Counsel for the company argued that if they had signed union cards the cards were the "best evi-

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[9a] The claim of exclusive federal jurisdiction was not made until later. See p. 31 below.

dence" (R. 129, 145), and, when the trial judge sustained this view, the union brought in the cards. It also produced the testimony of its leaders as to the efforts which had been made, prior to the strike, to negotiate with the plaintiff hotels (R. 217-239), and testimony of the workers as to their complaints and grievances. It also produced testimony concerning a secret ballot election, conducted on May 25 (R. 246-253), in which a majority of the employees of these hotels in the trades represented by the union had voted in favor of the strike.[10]

The plaintiff's testimony on the motion to vacate was limited to proof that, immediately following the strike at each hotel, the employees had been replaced (R. 260-262).

On June 16 and 17, after the conclusion of the hearing, the trial judges issued their opinions and orders dissolving the temporary injunctions. In the Sans Souci case, the trial court, limiting itself to the signed membership or designa-

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[10] This election, which covered most of the hotels here involved, was conducted by the union after the hotels refused to consent to jointly supervised elections and, in the Saxony, Sans Souci, Sherry Frontenac and Lombardy cases, after this refusal resulted in a strike. The union asked the City Council, the "President's Council" and the City Clerk to supervise an election. They declined. Finally it requested a local news commentator and columnist to act as supervisor. He consented.

20,000 leaflets were distributed, notices were posted, advertisements placed in all of the local newspapers and announcements made on local radio stations of the time and place of the election. Polling places were opened at two places in Miami Beach and one in Miami. Workers who appeared to vote were asked to identify themselves and their place of employment and given ballots, marked only with the name of the hotel, upon which they could answer yes or no as to whether they wished the union to represent them and, if necessary, to call a strike. The ballots were secret and were deposited in ballot boxes. The polls remained open for 14 hours. When closed at 10 P. M., the ballot boxes were sealed and then delivered to a central counting place, where they were counted in the presence of more than 200 persons. 2849 employees voted. Of these 2803 voted yes and 44 voted no. Two ballots were void. Objections and challenges to the voting procedure or the tally of the ballots were invited, but none were made. (R. 44-52, 247-253, 426, 481-484, 732, 745-748, 865-869, 1078).

tion cards introduced into evidence, found that some, although less than a majority, had so designated the union prior to the strike. It found that the union's representative had attempted to negotiate with the plaintiff prior to the strike and that the plaintiff knowingly had refused; that after the strike was called, additional employees joined the union or designated it as their bargaining agent; and that, in the May 25 election, a majority of those who had been working as of April 17 had voted for the union (R. 101-103).

Addressing itself to the law, the trial court first considered the application of Section 447.09(3) of the Florida Statutes Annotated to the strike. That statute makes it unlawful "to participate in any strike, walkout, or cessation of work without the same being authorized by a majority vote of the employees to be governed thereby." The court first found that the requirements of the statute had been met by virtue of the strike vote of May 25. If the fact that the strike vote had been held after the strike began was regarded to be material, the court said that it would have to consider whether Section 447.09(3) was constitutional. It concluded that the section was unconstitutional (R. 103-105).

The court then turned to the requirements for lawful picketing set forth in the Saxony opinion. Those requirements, it said, were contrary to the prior decision of the Florida

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The votes in favor of the union at the various hotels, as shown in the record, were as follows:

Hotel	*Employees Within the Union's Jurisdiction*	*Votes to Authorize Strike*	*Record Pages*
Saxony	300	225	44
Sans Souci	180	103	208,250
Sherry Frontenac	140	90	208,248
Lombardy	70	39	615,628
Miami Colonial	35	31	766,769
Delmonico		"overwhelming"	866
Robert Richter	49	33	985,992
Martinique	75	53	1072,1078
Versailles	75	57	323,330
San Marino	55	27	420,426

court in the *Cothron* case, 59 So. 2d 366, in which the Supreme Court had said that "there is no rule, regulation, or law in this State which requires notice to the employer of the reasons for an impending strike as a prerequisite to picketing." In any case, the court said, the new requirements had been met. The union had been "chosen by certain employees as the bargaining representative prior to the picketing . . . the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours, and working conditions of its employees who were represented by the union . . . the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plaintiff's evasive and stalling tactics did not intend to negotiate and refused to do so." (R. 106.)

In the Sherry Frontenac case, substantially the same result was reached. In that case, decided by a different judge, the court did not discuss the *Cothron* case, but found

> "that the Defendant union, through its authorized representatives, did inform the plaintiffs of its desire to engage in negotiations as the bargaining agent of a number of employees at the Sherry Frontenac Hotel within a reasonable time prior to the date upon which picketing began . . . that the union has established that a number of plaintiff's employees, although less than a majority, had chosen the defendant union as their bargaining agent and that these employees made this choice prior to the date of the appearance of the picket line before the plaintiff's premises . . . that the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955, and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate." (R. 547.)

The court went on to say:

> "The issue is clear. The purpose for the establishment of a picket line was in the exercise of the union's right of free speech—to proclaim to the world that plaintiffs refused to negotiate with the union's bargaining agent of a number of the employees at plaintiff's hotel. No evidence of coercion and intimidation by the union against either its own members, who were employees, or against non-union employees of plaintiffs who refused to cross the picket line, has been made to appear. . . . I, therefore, find that the picketing was not conducted for an unlawful purpose and that the plaintiffs have failed, by competent evidence, to sustain the allegations of its complaint 'that the picket line was placed around the plaintiffs' place of business for an unlawful or illegal purpose.' . . ." (R. 548-549).

The orders vacating the injunctions were issued on June 16 in the Sherry Frontenac case (R. 546) and on June 17 in the Sans Souci case (R. 101). Similar orders were entered at about the same time in the four other cases heard with them, but which are not before this court (see R. 277). On June 24 the Supreme Court issued orders in each of these cases to the effect that the prior petitions for certiorari—which had been filed in May seeking review of the trial courts' failure to issue restraining orders on the sworn and unanswered complaints—should be treated as a supersedeas of the orders vacating the temporary injunctions after answer and hearing (R. 274, 554).

The Lombardy and the Miami Colonial

In the meantime two other strikes had begun. The Lombardy was called out on strike on May 6 and the Miami Colonial on May 28. In both cases, complaints against picketing and other publication were filed. Both cases came on for hearing after answers had been filed and after the Supreme Court's opinion in the Saxony case.

In the Lombardy case the trial judge, simply stating that he was bound by the opinion in the Saxony case, issued a temporary injunction against picketing on May 31 (R. 646). The trial judge in the Miami Colonial case also issued a temporary injunction against picketing (R. 666) and on June 10 denied a motion to vacate it (R. 791). This judge, however, made his understanding of the Saxony opinion explicit. Contrary to his own prior views, the judge said, the Saxony opinion meant that before a union could picket it must first present to management the cards which had been signed by the employees designating the union as their bargaining agent or certify the results of some election (R. 780). This was not done. Therefore, the picketing was illegal. It was not enough to show, as the union did at the hearing on temporary injunction (R. 723-756, 766, 769), that the employees had in fact designated the union as their representative in an election prior to the strike. Nor, the judge further said in denying the union's motion to vacate, could the employees show that they had chosen the union by going out on strike. For, he said, by going out on strike they had terminated their employment and picketing thereafter was unlawful because there was no showing that the replacements wished the union to be their bargaining agent (R. 792-793).

The Delmonico and the President Madison

It was to meet precisely such objections that the union changed its tactics. The strike at the Miami Colonial was the last strike involved in the 12 cases. In the remaining cases—except the Nautilus in which picketing took place for only a day and was terminated even before a complaint was filed (R. 815)—the union first served on the employer a formal request that it join with the union in arranging for a fair and impartial election. In addition, the union's representative attempted, through personal meetings, to persuade the owner or manager of the hotel concerned to agree to such an election. When agreement on an election was re-

fused the union did not strike, but began picketing. The placards simply stated: "This HOTEL REFUSES to aid in determining its employees' bargaining agent. JOIN THE Hotel Employees Union," followed by the union's name and address (R. 828, 886). At the same time, the union distributed leaflets urging its members *not* to strike but to cross the picket line to continue work. "We realize that it is unusual for a union to request its members to work behind a picket line," the leaflets said, "but this is an unusual situation" (R. 952).

Picketing began in this fashion at the Delmonico and President Madison hotels on May 27 and May 31. Complaints for temporary injunction were, of course, filed (R. 825, 881). In its answer, in these and the succeeding cases, the union set forth that it represented a majority of the employees, that the plaintiff had refused to participate in an election, that the union had conducted an election in which a majority had authorized it to represent them, and, by way of affirmative relief, asked that the Court, if dissatisfied with that election, appoint a commissioner to hold another election (R. 835-843, 892-894).

A joint hearing was held before the same judge who had decided the Miami Colonial case (R. 832-873) and temporary injunctions against picketing were issued (R. 844, 895).

The Robert Richter and the Martinique

In these cases picketing began on June 8 and June 10, respectively. The union proceeded as it had in the prior two cases, and, indeed, it went further. Prior to beginning picketing, it also submitted to the employers sworn statements by a certified public accountant that he had examined the books and records of the union and that they showed that a stated number of the plaintiffs' employees were members of the union (R. 948, 1069). The number was, in each case, substantially more than a majority of the employees of

the hotel in the trades represented by the union: 40 out of 49 at the Robert Richter; 59 out of 75 at the Martinique.

In each case the hotel refused to bargain with the union unless it submitted the names of those whom it claimed to represent and "trustworthy proof that such employees have designated your union to represent them." (R. 949, 1071.) The union refused to do so and began to picket. Complaints and answers were filed, each supported by affidavits, and temporary injunctions were issued (R. 994, 1080). The injunctions not only prohibited the union from picketing but also from "publishing or causing to publish any statements to the effect that . . . the plaintiffs refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees. . . ." (R. 996, 1081.)

The Versailles

The union took the same preliminary steps before beginning picketing at the Versailles on June 11 (R. 310-312). The case was heard on the pleadings and their accompanying affidavits. The affidavits included the transcript of a conference between representatives of the company and the union, which had taken place prior to the picketing, as well as the usual written demand for negotiations (R. 310), certification by an accountant (R. 313) and refusal by the company to negotiate unless the names of the union members were submitted to it (R. 314).

The transcript of this conference (R. 355-366) showed quite clearly that the critical point of difference between the management and the union concerned the method of demonstrating the union's majority status. The union proposed that a secret ballot election be conducted and promised that, if it did not win a majority, it would not request bargaining for the minority which it did represent and would not picket the hotel. The company, on the other hand, insisted that the only method by which the union could dem-

onstrate its majority status was by agreeing to individual interrogation of each of the employees.

The union began to picket the hotel on June 11. A complaint was filed on June 15 (R. 298). In this case, however, a temporary injunction was not issued. The trial court found that the union had established that a majority of the employees had chosen it as their representative, that the labor organization had informed the employer of the object to be accomplished by the picketing, and that a fair opportunity had been afforded to the employer to engage in negotiations. Therefore, the court concluded, the picketing met the standards set forth in the Saxony opinion and the application for a temporary restraining order should be denied (R. 379).

The San Marino

The San Marino was the last of the 12 cases now before the court to be filed. The union took the same preliminary steps at this hotel that it had taken in the immediately preceding case (R. 424-426, 454-455). When the company refused to negotiate, it began to picket on June 15. In this case, the trial court sought a method to escape the dilemma which seemed to be presented in the prior cases. After hearing, it said:

> "The plaintiff stands ready, willing and able to negotiate . . . if and when said union can furnish to the employer evidence that the union does, in fact, represent the said employees and that gets us back to the letter of June 10th to which the defendant says they did not reply because they feared at that time that their names, if supplied, would be blacklisted. . . . Since, as a Court of Equity, I believe it is important to determine, if we can, what the facts are, and very frankly I am not sure that the evidence here is such that the Court can enter a final decree.
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> "I am disposed to grant a temporary injunction restraining the picketing pending the conducting of a

secret ballot of the employees who are eligible for membership in defendant who were employed by the hotel on the 15th of June, the day the picketing began.

"The Court will appoint a Commissioner to conduct this secret ballot and will allow a period of 30 days for the completion of this." (R. 499-500.)

An order in accordance with this opinion was entered on July 11, 1955 (R. 434).

It was this case which led to the next opinion of the Supreme Court of Florida in these cases. The plaintiff filed a notice of appeal from the portion of the decree providing for the election and asked for a stay of that portion of the order. The trial court refused to issue a stay except as to the entire order. The Supreme Court, in a per curiam opinion issued on July 27, 1958, granted a stay of the portion of the order providing for an election and allowed to remain in effect the portion of the order which stayed picketing of the hotel pending such election (R. 502-5).

THE FOURTH PHASE: THE SUPREME COURT AGAIN INTERVENES (OCTOBER 1955-JANUARY 1956)

The posture of the cases at the end of September, 1955, was this. In May, the Supreme Court had reversed the trial courts, first in the Saxony case and then in six other cases headed by the Boca Raton, for withholding temporary restraints pending hearing and decision. The court had, at the same time, set forth certain new prerequisites for lawful picketing in the State of Florida. Thereafter, temporary injunctions had been issued in all of those cases. In the six cases, including two now here for review, the Sans Souci and the Sherry Frontenac, the trial courts found, after hearing, that these new prerequisites for picketing had in fact been met and vacated the injunctions. In the Saxony the injunction remained outstanding. In seven other cases now here for review, in which hearings were held after the Saxony opinion, the trial judges issued injunctions. In the Ver-

sailles, the trial judge had refused, finding that the Saxony requirements had been met. And, in the San Marino, the trial judge had ordered an election and enjoined picketing pending its conclusion. The Supreme Court was again asked to reverse in all of the cases in which the trial judges had held in favor of the union.

Sans Souci and Sherry Frontenac

In October the Supreme Court gave its answer in the Boca Raton group of cases. In its opinion (R. 277) the Supreme Court of Florida faced two problems: (1) the plain contradiction between the law of Florida prior to these cases, as expressed in the *Cothron* case, and the prerequisites for lawful picketing set forth, as dicta, in the Saxony opinion; (2) the fact that the trial courts had found that the union had met the requirements of the Saxony opinion.

The first problem the Court met "forthrightly." The *Cothron* opinion had stated that there was no Florida law requiring notice to the employer of the reason for an impending strike as a prerequisite to lawful picketing and that the courts had no authority to create one. But, the Court now said, "although there may exist 'no rule, regulation or law of this State which requires' the foregoing prerequisites, certainly honesty of purpose, fair dealing, and a sound public policy demand them." Furthermore, the Court said, Section 447.03 of the Florida Statutes gives employees the right to self-organization and collective bargaining through representatives of their own choosing, and it is therefore appropriate for the courts "to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal." (R. 279.)

The court then turned to the second problem: the trial courts' findings that the union had observed the rules first set forth in the Saxony. Not so, said the Supreme Court. The courts had, indeed, found that the employer had refused to

negotiate with the union. But, said the Supreme Court, the employer had a duty to treat only with the employees' true representative. A majority was not required. But what was required, in order to justify union picketing which stated that the employer refused to negotiate, was the submission to the employer prior to the picketing of "some evidence of substantial character that at least some of the employees have chosen it as their representative." (R. 281.) In these cases, the union had, the court said, resorted to the coercive effect of picketing without first establishing, by such evidence, that it had in truth and in fact been designated by any of the employees (R. 282). The picketing was therefore unlawful, and the orders vacating the preliminary injunctions were quashed (R. 283).

The Versailles

The situation in the Versailles case was somewhat different. Before beginning picketing in that case, the union had offered, in conference with the employer, to submit to a secret ballot election. It had agreed that, although the Florida law appeared to give it the right to represent a minority and to picket if the employer refused to bargain with the union for its members, it would not seek such bargaining, or picket, if it did not obtain a majority in such an election. When the employer refused this proposal, the union submitted to him a sworn statement by a certified public accountant as to the number of the hotel's employees who had joined the union. Only when the employer refused to negotiate after this submission did the picketing begin. Furthermore, the trial court had found that the employees as to whom the certified statement had been submitted constituted a majority of the hotel's employees in the trades represented by the union.

These distinctions apparently did not make any difference. On December 14, 1955, the Supreme Court issued a per curiam opinion reversing the trial court's order denying tem-

porary relief and directing that an injunctive order be entered, on the authority of the Court's Boca Raton opinion (R. 389).

The San Marino

The same result necessarily followed with respect to the order for a secret ballot election which had been entered in the San Marino case. There was no precedent, the Supreme Court said, for the appointment of a commissioner to conduct an election. The union's claim that it was desirable to have a secret ballot in order to protect its members against "blacklisting" had no vitality because the union had, in fact, filed in the case some cards signed by its members. Proof of the union's status as a representative of the employees was part of the union's case, and "the parties should present their own case and they should not impose upon the Chancellor the burden of presenting it for them." (R. 507-511.)

THE FIFTH PHASE: FINAL ORDERS IN THE TRIAL COURTS (NOVEMBER 1955-FEBRUARY 1956)

All of the judgments of the Florida Supreme Court in the prior phases of the litigation were on preliminary injunction and, hence, could not be reviewed in this Court. (*Montgomery Bldg. Trades Council* v. *Ledbetter Co.*, 344 U. S. 178 [1952]). Under the Boca Raton opinion, proof at this stage of the union's representative status as of the date picketing began was immaterial. There was no course of action open to the union, therefore, other than to return to the trial courts and obtain final orders as the basis for a new appeal to the Florida Supreme Court and, ultimately, to this Court.

This was done. Pursuant to stipulation, final orders were entered in all of the cases (R. 53, 291, 394, 515, 570, 654, 797, 821, 873, 903, 1001, 1085). Briefs were filed in the Florida Supreme Court and, by the summer of 1956, all of the cases were ready for final disposition.

THE SIXTH PHASE: THE FONTAINEBLEAU (FEBRUARY 1957)

The Supreme Court did not immediately affirm the final orders which had been entered in these cases pursuant to its prior opinions. It held the cases and, in the meantime, decided still another case in which a trial judge had refused temporary relief. That case was ***Fontainebleau Hotel Corp.*** v. ***Hotel Employees Union,*** 92 So. 2d 415. It was decided on February 1, 1957. Although the case is not before this Court because the order directed by the Florida Court was not a final one and the dispute has since been settled, the opinion of the Supreme Court of Florida is significant because it provided the basis for that Court's final affirmances in these cases.

The picketing in the Fontainebleau case began in December, 1956, after the Supreme Court's second Boca Raton opinion had been issued. The union did its best to comply with the second revised set of standards for lawful picketing which had been established in that opinion. The trial court first issued a restraining order—as commanded in the Saxony opinion—on the basis of the sworn complaint. It then held a hearing and, on January 30, 1956, found that the union had in fact complied with the Boca Raton standards. It therefore dissolved the temporary restraint.[11]

The Florida Supreme Court reversed. It is difficult, however, to state with confidence precisely what it held, other than that picketing should be enjoined "under the circumstances presented." The Court began by stating that the trial court was confused about what the Supreme Court had in mind in the Boca Raton case when it said that the union, prior to a strike, should show that it represented "at least some of the employees." The court now said that this expression was "a mere expletive of the situation before the

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[11] These facts are set forth in the Supreme Court's opinion, which is reprinted as Appendix A to this brief.

court" and had no relevance to this case. A majority vote *was* required, both by Federal law and state law, the Court said, before a strike could be called.[12]

But the requirement of a majority, the Court went on, did not apply to picketing. As to picketing, the law was that it could not be initiated:

> "for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a 'species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity.' It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra."

Having thus stated the law governing picketing, the Court turned to the factual record before it. All of the correspondence between the parties, as well as the evidence taken in the trial, the Court said, "exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any." It then went on to examine the particular charges which the plaintiff made concerning the picketing. In doing so it seemed to reverse the normal burden. The trial court had

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[12] There is, of course, no such requirement under Federal law, and the states are forbidden to impose one in an industry affecting commerce. *Auto Workers* v. *O'Brien*, 339 U. S. 454.

vacated the injunction after hearing and had made findings of fact. The Supreme Court's apparent assumption was that this decision should be reversed unless the union could show that it was entitled to relief.

On this assumption the court pointed out that "for all the record shows" the placard carried by the pickets was a misrepresentation and was unfair. The evidence, it said, supported most of the plaintiff's charges: it was not "conclusively shown" that any bona fide labor dispute existed; it was not shown that there was any dissatisfaction with working conditions at the hotel; the picketing was for the purpose of obtaining recognition, and was accompanied by acts of "violence or near violence"; and, finally, the "gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel."

The Court concluded its opinion by stating that the requirements for picketing discussed in the opinion applied only to picketing by representatives of a union. Any number of employees, even less than a majority, the court said, could lawfully picket if, prior to beginning such picketing, they complied with the prerequisites set forth in the Saxony opinion. However, the Court said, that rule was applicable to employees only. The union as such and, as distinguished from the individual employees, could not engage in picketing which used members of the union who were not employees of the subject employer "under the circumstances presented here."

This concluding paragraph of the Florida Supreme Court clearly meant that all of the extensive reasoning about the requirements for lawful picketing which had been set forth in the Saxony and Boca Raton opinions was not applicable in many of the other pending cases. In many of those cases the union sought to protect its members, and did not ask them to strike. Instead, it submitted a certificate as to the number, but not the names, of its members, and asked for a secret ballot election. The subsequent picketing in such

cases would not be done by the members of the union employed in the hotel being picketed—they were still working —but by other union members.[13]

THE SEVENTH PHASE: FINAL DECISIONS BY THE FLORIDA SUPREME COURT (MARCH 15, 1957)

Finally, on March 15, 1957, the Supreme Court decided all of the instant cases. The Court did not decide them, however, on the basis of its prior Saxony or Boca Raton opinions. To the contrary, in identical per curiam opinions, it affirmed the final order of the trial courts in each case on the authority of the Fontainebleau case. (R. 57, 295, 399, 520, 574, 657, 801, 823, 878, 908, 1006, 1090.)

Much of the Fontainebleau language was, of course, inapplicable to these cases. In none was there any finding of violence or "near violence." In some there was a finding, unreversed by the Supreme Court of Florida, that the union represented a majority of the employees and that it had afforded to the employer an opportunity to engage in negotiations before it began picketing. In others there was considerable evidence of dissatisfaction with wages or working conditions. To the extent that meaning can be derived from the fact that the Supreme Court of Florida decided all of these cases on the basis of the Fontainebleau opinion, therefore, it must be assumed that the portion of the opinion referred to was the portion distinguishing between picketing by employees and picketing by a union. The Saxony and Boca Raton requirements applied to employee picketing. But union picketing was now subject to the requirement, unstated in the earlier opinions but set forth in Fontainebleau, that it "be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public," not in an atmosphere of "insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit."

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[13] The records in the cases are actually silent on this point, since, until Fontainebleau, no one thought it significant.

THE DISPOSITION BY THE FLORIDA COURT OF THE FEDERAL QUESTIONS

Except for a brief reference to *A.F.L.* v. *Swing* in the Fontainebleau opinion, the Florida Supreme Court ignored the union's contention, which had been made from the beginning in each of these cases, that the injunctions against peaceful picketing, and against publication in any medium of the fact that a dispute existed, violated the union's right to free speech. The union had raised this defense in its first responsive plea in each case.[14] In its assignments of errors [15] and in its brief to the Florida Supreme Court [16] the union set forth its contention based upon the First and Fourteenth Amendments, both as to the injunctions against picketing and the restraint against other publication. It also set forth, in its assignments and its brief, the contention that the final decrees violated the Fourteenth Amendment because they were based on "unsubstantiated findings" and went beyond the scope of any findings "insubstantial or otherwise" (see, e.g., R. 55-56). The Supreme Court of Florida rejected these contentions by affirming on the authority of Fontainebleau.

The union also raised, in each case, the contention that the Florida courts lacked jurisdiction because of the federal regulation of labor relations in industries affecting commerce. This was done, in most of the cases, by supplemental answer filed on June 28, 1955.[17] In the stipulations

[14] R. 28, 95, 321, 418, 540, 590, 787, 835, 843, 962, 1067. No specific reference was made to the constitutional right of free speech in the answer in the Nautilus case since the union alleged that the case was moot. (R. 814). The issue was raised, and not objected to, however, in the union's assignment of errors and brief in the Supreme Court.

[15] R. 54, 292, 397, 516, 655, 799, 823, 875, 905, 1003, 1086.

[16] R. 58.

[17] R. 33, 285, 334, 431, 565, 648, 845, 896, 996, 1082. The supplemental answer raising the preemption issue is apparently omitted from the record in the Miami Colonial and Nautilus cases. In both cases however, it was stipulated, as in the other cases, that an affidavit could be offered in support of this defense, subject to objection as in the other cases.

which the parties entered into pursuant to which final decrees were entered, it was agreed, that the union would produce a witness who would testify, in accordance with an attached affidavit, that the hotel was engaged in a business affecting interstate commerce and that such testimony, if produced, would be objected to on the ground that it was immaterial and irrelevant.[18] In each case the trial court, in entering its final decree, sustained the objection.[19] The union in each case set forth in its assignments of errors its contention that this ruling constituted error.[20] The question was briefed by the parties before the Supreme Court of Florida. The union contended that the state courts were without jurisdiction, relying upon the preemption cases in this court.[21] The employers contended that, because of the refusal of the National Labor Relations Board to take juris-

[18] R. 36, 287, 568, 650, 794, 819, 847, 898.

In the Versailles, Robert Richter, Martinique and San Marino cases the procedure was somewhat different. In the Versailles and Robert Richter, the plaintiffs moved to strike the supplemental answer alleging exclusive Federal jurisdiction on the grounds that the matters alleged therein were immaterial and insufficient to state a defense (R. 336, 999). The parties stipulated that the affidavits, including the affidavit as to commerce, could be considered by the trial court on final hearing (R. 393, 1000). The trial court ignored both the answers and the motions to strike them in entering its final decrees (R. 393, 1000).

In the Martinique there was no motion to strike, and the parties stipulated that the Chancellor could issue a final decree on the basis of the affidavits on file, including the affidavit as to interstate commerce in support of the supplemental answer (R. 1084).

In the San Marino, the initial hearing on temporary injunction was held after the supplemental answer had been filed and the Chancellor found that its allegations were not supported by evidence (R. 434). In his final decree, however, the supplemental answer was stricken together with the portion of the affidavit, previously filed, as to interstate commerce (R. 515).

In all cases, error was identically assigned and the question briefed on its merits before the Supreme Court of Florida.

[19] R. 53, 291, 570, 654, 797, 821, 873, 908.

[20] R. 55, 293, 397, 516, 573, 656, 799, 823, 875, 906, 1003, 1086.

[21] R. 62.

diction, the state courts retained jurisdiction.[22] The Supreme Court of Florida disposed of the issue by ignoring it.

SUMMARY OF ARGUMENT

1. The rules governing the right to engage in peaceful picketing established by the Florida court in these cases, even if they be assumed to *be* the rules, are contrary to the constitutional limitations set forth in *Thornhill* v. *Alabama,* 310 U. S. 88, and *A.F.L.* v. *Swing,* 312 U. S. 321.

The instances in which this Court has, since *Thornhill,* sustained limitations of peaceful picketing, which genuinely contained a substantial element of communication to the public, have involved picketing engaged in for the purpose of effectuating a result contrary to the law or the public policy of the state. In such cases, the Court has held that, even if an element of communication is involved, the non-speech elements involved in the use of picket signs justify a prohibition of picketing designed to accomplish such purposes. Florida here has used "unlawful purpose" language but the rules it established, conditioning the right to picket peacefully, do not relate to the action sought to be induced by the pickets. They are, rather, rules specifically designed to limit the use of picket signs as a method of communication irrespective of the propriety of the purpose of the pickets.

The rules are themselves manifestly unfair. But the critical question is not the wisdom or fairness of the rules but the power of the state to establish such rules.

In these cases the action by the employers which the union sought to induce by picketing was not contrary to, but in conformity with, the declared public policy of the state of Florida, and the picketing was truly used as a method of communication to the general public. Under the decisions of this Court, therefore, Florida was without power to pre-

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[22] R. 77-78, 1040-1043.

scribe preconditions to the use of this particular method of disseminating information.

2. The injunctions in six of these cases also specifically prohibited the union from publishing in any form what are, indisputably, the facts of this dispute. This restraint is plainly unconstitutional.

3. The course of decision in these cases makes it clear that the Supreme Court of Florida would not permit picketing by this union in this dispute even if the union complied, as it did, with the law as announced by that Court. In so doing it denied the union both due process and the equal protection of the laws.

The Florida court has the right, of course, to modify existing precedent. But it is plain that the court here has not judged the union according to the rules but has changed the rules, again and again, in order to achieve a pre-determined result. Both the result and the process by which it is achieved violate the constitution.

4. The injunctions against picketing here constitute an exercise of state power which cannot constitutionally stand against the federal preemption of the field contained in the National Labor Relations Act. There can be no serious dispute as to the fact that these hotels are engaged in an industry affecting interstate commerce. The refusal of the National Board to exercise its jurisdiction in that industry does not, as this Court held in *Guss* v. *Utah Board,* 353 U. S. 1, re-vest jurisdiction in the states. And it is clear that the activity which Florida here enjoined is protected by the federal statute.

ARGUMENT

I.

THE INJUNCTIONS AGAINST PICKETING IN THESE CASES VIOLATE THE PETITIONER'S RIGHT OF FREE SPEECH

In *Teamsters' Union* v. *Vogt,* 354 U. S. 284, this Court reviewed its prior decisions concerning the extent to which peaceful picketing was protected by the Fourteenth Amend-

ment as a form of communication. Those decisions, the Court said, "established a broad field in which a State, in enforcing some public policy . . . could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." 354 U. S. at 293. This case presents the question of whether there are any limits upon the policy which the state can so enforce or whether, as the dissent in the *Vogt* case said, state courts are now free to enjoin peaceful picketing "for any reason other than a blanket policy against all picketing." Id. at 297.

The answer to this question, we hope, has already been suggested by this Court's per curiam reversal of the Supreme Court of Kansas in *Teamsters' Union* v. *Newell,* 356 U. S. 341, just as the *Vogt* opinion was foreshadowed by the dismissal of the appeal in *Pappas* v. *Stacey,* 350 U. S. 870. The simple citation to *"Thornhill* v. *Alabama,* 310 U. S. 88, 98, *Third"* in the *Newell* per curiam, however, is something less than a full answer.

In the present cases there is no statutory ban against all picketing, such as that discussed in *Thornhill* v. *Alabama.* Nor has Florida in these cases established such a ban by judicial fiat. It is possible to urge—and we do so urge in Part III of this argument—that the sequence of events here shows a determination by the Florida Supreme Court that this union shall not be permitted to picket at the Miami Beach hotels, irrespective of the facts. If we are correct in that contention the injunctions in these cases cannot stand, not so much because they were entered pursuant to a policy against all picketing but because this union is entitled to have the same rules applied to it, and applied with at least some semblance of due process, as apply to others.

But it is not necessary for the Court to go that far. Even if we assume that the rules limiting peaceful picketing set forth in the Florida court's successive opinions are, in truth, the rules and if we assume that they had been in effect from

the beginning, still, we submit, they cannot constitutionally stand.

We begin by making a distinction which has too often been obscured in the cases—the distinction between picketing for a purpose which the state says is against public policy and picketing for a purpose which the state does not regard as against public policy but for which the state says it is against public policy to picket.

Most of the cases in which this Court has limited the doctrine first stated in *Thornhill* v. *Alabama* and *A.F.L.* v. *Swing,* 312 U. S. 321, dealt with the former—that is, picketing to accomplish an objective which the state would consider unlawful or against public policy if accomplished. Thus in *Giboney* v. *Empire Storage and Ice Co.,* 336 U. S. 490, the objective of the picketing, if accomplished, would have constituted a violation of Missouri's valid anti-trust law. In *Hughes* v. *Superior Court,* 339 U. S. 460, the Court regarded California as having a policy against the proportionate hiring of Negroes. In *Electrical Workers* v. *NLRB,* 341 U. S. 694, the objective of the picketing was to induce a secondary strike violative of the National Labor Relations Act. A similar policy was involved in *Carpenters Union* v. *Ritters Cafe,* 315, U. S. 722. In *Building Service Employees* v. *Gazzam,* 339 U. S. 532, the objective of the picketing was the coercion by the employer of the employees in their selection of a bargaining representative, coercion which the state had declared unlawful. *Pappas* v. *Stacey,* 350 U. S. 870 and *Teamsters Union* v. *Vogt, Inc.,* 354 U. S. 284, presented the same state policy. *Plumbers' Union* v. *Graham,* 345 U. S. 192, involved a picketing which the state had found was intended to accomplish a result in violation of the state's "Right to Work" law.

The test in all of these cases was the objective sought to be achieved by the picketing. If the objective were unlawful, no matter how induced, or even if not unlawful, would violate a particular and defined public policy, whether an-

nounced by the legislature or the courts, the picketing could be said to be for an "unlawful purpose."

An "unlawful purpose" does not, of course, justify a restraint on every kind of communication. See *Yates* v. *United States,* 354 U. S. 298. But picketing, as this Court has said, may involve "more than publicity." It can cause, and in most of the cases with which this Court has had to deal, has caused, employees of suppliers, trucking companies, etc., to refuse to deliver or haul goods. Or it can cause employees to refuse to go to work. When the picketing is done for such purposes, or has such effect, it operates as a "signal" to other workers, as well as a method of communicating information to the public.

In every case therefore, this Court said in *Vogt*, the question was one of reviewing "the balance struck by a State between picketing that involved more than 'publicity' and competing interests of state policy." 354 U. S. at 290.

In no case in which there could fairly be said to be any substantial element of communication [23] in the picketing has this court approved a restraint on picketing based on a state policy specifically related to picketing. If a state sought to enjoin picketing because of the absence of a labor dispute, or because the men carrying the picket signs were not employees, the Court struck down the restraint as a restraint on communication. *A.F.L.* v. *Swing,* 312 U. S. 321; *Bakery Drivers Local* v. *Wohl,* 315 U. S. 769; *Cafeteria Union* v. *Angelos,* 320 U. S. 293.

The law of Florida prior to these cases was fully in accord with these principles. See the cases cited *supra* at p. 10. And the actual holding in the Supreme Court of Florida's first decision here, the Saxony opinion, was also in accord. In that case the court held that an injunction should issue because the sworn complaint alleged that the objective sought to be achieved by the picketing was that the em-

[23] Cf. *Carpenters Union* v. *Ritter's Cafe,* 315 U. S. 722.

ployer coerce his employees to join the union—action which would be contrary to the state's policy, no matter how induced. In the absence of an answer or contradicting evidence, the Court said. this allegation had to be taken as true. Whatever one may think of this as adjective law, the substantive holding simply reiterated existing law well within the permissible limits set by this Court in *Gazzam* and followed in *Vogt*.

But as dictum the Florida Court for the first time set forth rules, not as to "the manner in which picketing is conducted or the purpose which it seeks to effectuate" (*Hughes* v. *Superior Court, supra,* at p. 465), but concerning the preconditions which must be met by picketers, whatever their purpose. This was the crucial step. Once embarked on this course the state was not enforcing any public policy other than a policy as to picketing, however often the language of "unlawful purpose" might thereafter be recited (R. 282). In Saxony the conditions stated by the court were that the union represent some members working in the establishment, that it inform the employer of the objective of the picketing and that it afford him an opportunity to negotiate (R. 18). In Boca Raton the court added another prerequisite: that the union submit proof to the employer that it represented some members before beginning to picket (R. 281). The Versailles case made it clear that this proof had to be in the form of a submission of the names of the members. Finally, in Fontainebleau, the Court said that those rules only applied when employees did the picketing. Union picketing was subject to the requirement that it could not be done in a "damned-if-I-don't-show-you spirit."

It is, of course, easy to attack the content of these rules. They are plainly designed to compel a union to commit suicide as an organization as a condition for the right to begin picketing in support of a demand for recognition. The information which Florida required that the union supply is the information which any employer needs in order to

enable him to discharge the adherents of the union at his convenience and to apply the now fortunately infrequently-used technique of the blacklist. It is the rare worker who, unprotected by the National Labor Relations Board, will willingly sign up with an unrecognized union if he knows that the union will deliver his name to the employer.

But the critical question for this Court is not whether Florida's rules as to the preconditions for peaceful picketing or wise or fair but whether Florida has the power to make rules of this kind. Once the initial premise is granted that a state can regulate and license, if you will, the right to picket peacefully without reference either to the purpose sought to be achieved or the manner in which the picketing is conducted, then as far as the constitution is concerned the sky is the limit.

This Court has never heretofore granted that premise. Of the cases in which state restraints on peaceful picketing have been sustained, only *Teamsters Union* v. *Hanke,* 339 U. S. 470, can even be argued to support the premise. And in that case there was no opinion of the Court.

In the present cases there are none of the ingredients which this Court in prior cases found to be sufficient to justify the imposition of restraints on communication by picket signs. The objective of the pickets—recognition and collective bargaining at the most, in some cases only agreement to conduct an election to determine if a majority wanted collective bargaining—is not contrary to any policy of the state of Florida. It would not have been a violation of any policy of the state for the Versailles, for example, to agree to a secret ballot election or, indeed, to sign a collective bargaining agreement with the union which a majority of its employees had in fact joined. What violated the policy of the state was the use of peaceful picketing to achieve those objectives without meeting the specific conditions for picketing established by these cases.

Nor, in these cases, can it possibly be argued that the

picketing was not truly communication. The only effect of the picketing, as alleged by the complaints, was that "members of the public are being deterred . . . from patronizing" the struck hotels (R. 7). Suppliers, truck drivers, and indeed union employees, did not regard the picketing as a "signal" and all crossed the picket lines. The fact that injunctive relief was sought, not only against picketing in the vicinity of the hotels, but also against any publication of statements as to the labor dispute, makes it crystal clear that the result sought to be achieved by the plaintiffs, and in fact achieved pursuant to the injunctive orders entered, was not relief against picketing because it involved more than publicity, but against publicity itself. The injunctions against publication are, of course, unconstitutional. But we see no basis for distinguishing in these cases between the publicity achieved by publishing statements in a newspaper and the publicity achieved by carrying signs. Both forms of dissemination were here used for publicity purposes and both were enjoined because of the effect which they had as communication.

The decisions of this Court still require that, in order to restrain such picketing because of its potential non-speech elements, the state demonstrate that the objective of the picketing, if achieved, would violate some specific state policy. They do not permit the state to establish, as Florida has done here, preconditions for the peaceful display of honestly written picket signs. The fact that every opinion of this Court dealing with the free speech-picketing question in the last 15 years has rejected the claim of constitutional protection, has, perhaps understandably, led some courts to believe that so long as they use the magic words "unlawful purpose," any kind of restraint on peaceful picketing will be sustained.[24] Other courts have correctly as-

[24] *Godchaux Sugars, Inc.* v. *Chaisson*, 78 S.W. 2d 673 (La. 1955); *Klibanoff* v. *Retail Clerks*, 258 Ala. 479, 64 So. 2d 393 (1953).

sumed that the cases limiting the doctrine of *Thornhill* and *Swing* mean no more than what they say and have held unconstitutional requirements that a union show a majority before using the picket line.[25] It would not be inappropriate, we submit, for this court explicitly to confirm their assumption.

II.

THE INJUNCTIONS AGAINST OTHER PUBLICATION WHICH WERE ISSUED IN SOME OF THESE CASES ARE CLEARLY INVALID

As noted in the Statement the trial courts in six of these cases[26] enjoined not only picketing but also enjoined the union from making any publication — whether through handbills, advertisements or otherwise—of the fact that there was a strike or that the hotel refused to negotiate or recognize the union. This was not the kind of "argumentative excess" which "astuteness may discover" in reading the terms of the injunction against picketing, to which this court referred in the *Vogt* case, 354 U. S. at 295. On the contrary, it was a separate and distinct restraint, wholly unrelated to the restraint against picketing. Nor was the injunction against publication sought idly. As the record shows, one of the plaintiffs' real concerns was to prohibit advertisements in newspapers in other cities (R. 269, 314, 951) and handbills (R. 409-412, 1052-1055).

There can be no serious contention that the publication which was enjoined by the trial courts would be false or libelous (even if it be assumed that false publication can constitutionally be enjoined). There was a strike at the

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[25] *Baldwin* v. *Arizona Flame Restaurant*, 313 P. 2d 759 (Ariz. 1957); *Gilbertson* v. *Culinary Alliance*, 204 Ore. 326, 282 P. 2d 632 (1955).

[26] The injunctions in the Lombardy (R. 646), the Miami Colonial (R. 666), the Nautilus (R. 817), the Delmonico (R. 844), and the President Madison (R. 895) enjoined only picketing. The injunction in the San Marino (R. 435) at which no strike took place enjoined only publication that a strike existed.

Saxony, the Sans Souci and the Sherry Frontenac. The plaintiffs admitted it, and indeed asserted it. The plaintiffs did deny, but the trial courts in several cases found to the contrary, that the hotels refused to negotiate with the union. There can be no question that they refused to recognize the union.

The injunctions forbade the union to publish, or to procure the publication, of these facts in any manner. We can think of no justification which would possibly sustain the constitutionality of that portion of the injunctive orders. *Lovell* v. *Griffin,* 303 U. S. 444; *Near* v. *Minnesota,* 283 U. S. 697.

III.

THE PATTERN OF DECISIONS OF THE FLORIDA SUPREME COURT REVEALS A COURSE OF CONDUCT DESIGNED TO DEPRIVE PETITIONER AND ITS MEMBERS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION

The prerequisites to lawful picketing set forth by the Florida Court in these cases are, as we argue above, unconstitutional. But in these cases the union, without waiving its constitutional objections, sought nevertheless to comply with these prerequisites. Over a two-year period it found that it was impossible to do so. This was not a product of the constitutional infirmity of the regulations themselves, but the product of what can only be described as law on a treadmill. Every time the Supreme Court of Florida came up with a new requirement the union sought to meet it. And, when it did, the Florida Court found that some new requirement existed, or was implicit in its earlier set of rules.

We do not contend that the United States constitution proscribes the right of state courts to modify established law. We recognize that "in general, the decision of a [state] court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the

Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed." *Patterson* v. *Colorado,* 205 U. S. 454; *Milwaukee Electric Railway & Light Co.* v. *Wisconsin,* 252 U. S. 100.

We do contend, however, that the Fourteenth Amendment to the Constitution does require that parties be given an opportunity to comply with the law and that they be permitted to know what the law requires so that they may rationally conduct their lawful affairs. In Justice Frankfurter's words, due process "expresses a demand for civilized standards of law." *Malinski* v. *New York,* 324 U. S. 401, 414. While there is nothing uncivilized about a legal standard which permits an appellate court "to alter or correct its interlocutory decision upon a first appeal when the same case, with the same parties, comes before it again," *Moss* v. *Ramey,* 239 U. S. 538, 547, when cases "between private parties [are] arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed facts . . . the judgment may be in violation of the Fourteenth Amendment." *Williams* v. *Tooke,* 108 F. 2d 758, 759 (CA 5). Constantly changing legal standards which cannot be met or relied upon are irrational and, in a real sense, "uncivilized."

This Court has long recognized that the "benign provisions of the Fourteenth Amendment" will not countenance state laws which are "applied and administered by public authorities with an evil eye and an unequal hand," or legal requirements "applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the Petitioners, as to all other persons." *Yick Wo* v. *Hopkins,* 118 U. S. 356, 373.

The facts in these cases demonstrate, we submit, the applicability of this rule. When the picketing here began in

the first cases it was not in violation of any existing Florida law. The Supreme Court then, in Saxony, established certain procedural prerequisites which, it said, must be complied with before any picketing began. The union then showed, in the trial courts, that in fact it had met those prerequisites even though they were unknown at the time. And, as it organized new hotels it carefully met each of the preliminary steps specified in the Saxony opinion. Again the Supreme Court intervened and, in Boca Raton, added a new prerequisite for the initiation of lawful picketing. Since this preliminary step had not been taken before the picketing began, the Supreme Court said, all picketing in those cases should now be enjoined. And then when still another dispute arose and the union carefully abided by the last set of rules as to the necessary preliminaries, the Florida Court said that those rules only applied to employee picketing; a wholly new standard applied to picketing by non-employees. Since the picketing was begun with non-employees, all picketing must be restrained in the future. And then, finally, it affirmed final orders enjoining picketing in all of the cases on the basis of this new announcement.

The rules themselves, as we have urged above, are constitutionally void. But even if we were to assume that such rules might otherwise be valid, still the judgments here should be reversed. For the sequence of events makes it clear that the announced rules were not in fact the real rules —the real rule was that, irrespective of the law, and, indeed, irrespective of the facts, picketing by this union at the Miami hotels was to be enjoined.

In other areas this Court has not been reluctant to pierce the veil of rationalization offered to justify an unspoken but apparent determination to reach desired, but forbidden results, whether set forth "ingeniously or ingenuously." *Smith* v. *Texas,* 311 U. S. 128, 132. Nor should it, we submit, be reluctant to do so here.

IV.

THE INJUNCTIONS HERE ISSUED ARE INVALID UNDER THE COMMERCE AND SUPREMACY CLAUSES OF THE CONSTITUTION

The action of the Florida Supreme Court in sustaining, over petitioner's objections, the exercise of state power represented by the injunctions against picketing in these cases is plainly contrary to the decision of this court in *Guss* v. *Utah Labor Relations Board,* 353 U. S. 1(1957). There can be no serious dispute that these hotels are engaged in a business which affects interstate commerce. There are undisputed affidavits to that effect which the trial courts held to be irrelevant. Furthermore, this Court can take judicial notice of the fact that there is now pending in this Court a case in which it is conceded by the National Labor Relations Board that the business of these hotels comes within the statutory definition of commerce contained in the National Labor Relations Act. *Hotel Employees Union* v. *Leedom,* No. 21 this Term.

It is true, of course, that the National Labor Relations Board refused to take jurisdiction over the present cases. But this refusal, as in the *Guss* case, was based upon a claimed discretionary right to refuse jurisdiction, not upon any contention that the labor relations practices of these hotels are not governed in substance by the National Labor Relations Act.

In the *Guss* case, this Court held that the refusal of the National Labor Relations Board to exercise jurisdiction does not confer jurisdiction upon the states to regulate labor relations matters which they would be forbidden to regulate, under the Commerce clause of the Constitution as implemented by the National Act, if the Board would exercise jurisdiction. This case comes squarely within the terms of the *Guss* decision. Indeed, it provides a much clearer case of conflict with federal law than was presented in *Guss.*

In the *Guss* case, as well as in the two companion cases, the party proceeded against under state law claimed that the state had no jurisdiction because the conduct sought to be enjoined was also a violation of federal law. This Court sustained that contention. In this case, the party proceeded against in the state courts—the union—contends, without fear of substantial contradiction, that the activities which Florida has restrained are activities which are protected against interference by the terms of Section 7 of the National Labor Relations Act. This case, in short, is not *Garner* v. *Teamsters Union,* 346 U. S. 485, but *Auto Workers* v. *O'Brien,* 339 U. S. 454. Or, more specifically, it is *Youngdahl* v. *Rainfair, Inc.,* 355 U. S. 131.[27]

This distinction is particularly emphasized by the fact that throughout the Miami controversy the union has used every possible effort to procure the intervention of the National Labor Relations Board. It filed petitions with the Board to conduct secret ballot elections. It filed charges of unfair labor practices against the employers. And it is now engaged in an effort, through litigation, to compel the Board to exercise its plain statutory mandate to apply the National Labor Relations Act to these disputes.

This union does not seek refuge in a "no man's land." It has no desire to avoid regulation by either state or federal bodies. It seeks only to protect rights guaranteed to it by Federal statute and, indeed, until this litigation, by Florida law.

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[27] The record does not specifically disclose in each case whether the pickets were striking employees or other members of the union. It is a fair assumption, however, that in the cases in which the union did not call a strike and, because of fear of reprisals, refused to disclose the identity of its members employed by the hotel, the pickets were not employees of the hotel picketed. As we read in *Youngdahl* v. *Rainfair, Inc.*, supra, however, this is immaterial. But cf. *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105.

CONCLUSION

For the reasons above set forth, the decisions of the Florida Supreme Court in all of these 12 cases should be reversed and the injunctive orders affirmed by it should be vacated.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 EN BANC

CASE NO. 28,074

FONTAINEBLEAU HOTEL CORP., A FLORIDA CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF.

Respondents

Opinion filed February 1, 1957.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, WILLIAM A. HERIN, JUDGE.

TERRELL, C. J.

December 21, 1955, petitioner filed a sworn petition in the Circuit Court of Dade County on the basis of which temporary restraining order was directed to respondents commanding them to desist from picketing the Fontainebleau Hotel. January 30, 1956, after answer of defendants was filed, the cause came on for hearing before the chancellor; evidence was taken and the temporary restraining order was dissolved. We are confronted with a petition for certiorari to review and quash the order dissolving the temporary injunction.

Petitioner first contends that respondents did not represent its employees, that petitioner was not notified of any labor grievance prior to the picketing, nor was it given the object to be accomplished by the picketing or a reasonable time to accept or reject the union demands.

Sections 447.01 (1) (2), 447.03 and 447.09 (3) (4) (11), Florida Statutes 1955, are relied upon to support petitioners grounds for relief. Section 447.01(1)(2) is a statement of policy with reference to the regulation of labor unions, their agents, employees and other representatives. Section 447.03 guarantees laborers the right to organize and join a union, to bargain collectively, including acts for mutual aid and protection. Section 447.09(3)(4)(11) preserves the right of franchise but makes it unlawful to participate in any strike, walkout or cessation of labor or continuation thereof unless authorized by a majority vote of the employees affected. It requires elections to strike or cease work to be by secret ballot. It is made unlawful to intimidate a workman or his family in the enjoyment of these rights, to picket his domicile or to injure his person, property or that of his employer or family. Collectively, these statutes require that all employer-employee relations be conducted decently and in order .

At the outset it is shown that the trial court was confused about what this court had in mind in Boca Raton Club v. Hotel Employees Union, Local No. 255 (A. F. of L.), 83 So. 2d 11, when it stated that the union, prior to strike, should show that it represented "at least some of the employees." The reason for the expression "at least some of the employees" was that in that case it was not shown that the union represented any of the employees prior to the strike. In the case last cited the court contrasted Florida requirements and those of the Federal law wherein a majority of those belonging to the union is required to precipitate a strike. The quoted expression was a mere expletive of the situation before the court and has no relevance to this case.

It is not amiss to point out that there are circumstances in which the right to picket is an aspect of freedom of speech and may not be infringed. A. F. of L. v. Swing, 312 U. S. 321; Whitehead v. Miami Laundry Co., 160 Fla. 667, 36 So. 2d 382, and others. In Sax Enterprises v. Hotel Employees Union, Local No. 255, Fla. 80 So. 2d 602, and in other cases, we have called attention to the law placing limitations on picketing by requiring that it be peaceful, that the union must show that it represents the employees, that the employer must have been told of the object to be accomplished

by the picketing and afforded an opportunity to negotiate whatever differences there may be or impediments there are to accomplish the objective of the picketing.

At the trial and on appeal the law governing picketing and that governing the right to strike were confused. As to the latter, Section 447.09(3), Florida Statutes, as well as the Federal law, require that strike be approved by a majority vote of the employees to be governed thereby. No such requirement exists as to picketing. It cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a "species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity." It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra.

The correspondence conducted between petitioner and respondents, as well as the evidence taken at the trial, exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any. We find little or no evidence to support the truth of the legend borne on the placard carried by the picketers, "This hotel unfair". Hotel Employees Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." For all the record shows, the placard was a misrepresentation and was unfair to the petitioner. There is showing of intimidation by representatives of respondents to impede petitioner's employees in going to work. The picket line was thrown up before there was showing of any lawful grievance against petitioner and the picketers are not shown to have refrained from abuse to patrons entering the hotel or laborers working there. There is showing that about 200 of the

approximately 1,000 employees of the hotel signified the union as their bargaining agent prior to December 21, 1955, the day picketing started.

The correspondence between petitioner and respondents was commenced November 30, 1955, and was concluded January 6, 1956. In sum it charges: (1) That the picket line was thrown up without any pre-existing honest or forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute existing between the parties. (2) The picket line was thrown up before affording any fair opportunity to engage in negotiations. (3) Prior to picketing it was not shown by evidence of substantial character that the union was the authorized bargaining agent of the employees. (4) Under the law of this state the employer is required to negotiate with the true representative of the employees and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. It is not sufficient to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or for that matter a majority of the employees. Boca Raton Club, Inc., v. Hotel Employees Union, Local No. 255, supra. (5) Prior to organizing a picket line, respondents failed to furnish evidence of substantial character that any employees had chosen it as their representative and offered the employer no opportunity to negotiate. (6) The employer has never been informed of the subject for negotiation, not only that, but respondents have attempted to coerce employer to participate in conduct prohibited by law. (7) Respondents do not represent the employees of the petitioner as their bargaining agent.

Respondents deny or evade these charges but the evidence supports most of them. The law of this state regulating picketing was designed to protect the laborers, the proprietors, and the public. All have a stake in the proper regulation of employer-employee relations. This court has in several cases discussed the prerequisites to good labor relations. Under the statute, Section 447.09(12)(13) and other provisions thereof, picketing contemplates a labor dis-

pute; it should not be conducted beyond the area of the industry or business where the labor dispute arises; it should not be done by force or violence; nor should it be done in such a manner as to prevent ingress and egress to and from any premises and it must be done in a peaceful manner. If done in aid of a strike, walkout, cessation of work or continuation thereof, it must be approved by a majority vote of the employees. Absent these requirements it is not necessary to determine at this time what percentage of the employees should participate in lawful picketing.

From a study of the record it is not conclusively shown that any bona fide labor dispute existed in petitioner's hotel. Only two of its employees participated in the picketing; in fact they did not know of the purpose of the picketing. It is not shown that there was any dissatisfaction with working or other conditions at the hotel. The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. It was accompanied by acts of violence or near violence condemned by the statute. The gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel.

When a bona fide industrial grievance arises, legal and orderly picketing may be indulged in, but the law places limitations on it. It condemns violence, manhandling, the use of the club or the blackmariah. It provides an orderly process to conduct it and it contemplates that both parties will cooperate to bring about a solution advantageous to all concerned.

Nothing contained herein shall be construed as prohibiting any number of employees less than a majority from engaging as individuals (as distinguished from representatives of a labor union) in lawful picketing for the purpose of truthfully acquainting the public with their grievances, provided that prior thereto they shall have complied with the prerequisites to lawful picketing set forth in our opinion in Sax Enterprises vs. Hotel Employees Union Local No. 255, supra. In this opinion we are dealing exclusively with the right of a labor union which has been designated as the bargaining agent of less than a majority of employees of a given

employer, and we hold merely that the union as such, and as distinguished from the individual employees, may not, under the circumstances presented here, engage in picketing by use of the members of the union as pickets who are not employees of the subject employer.

We are convinced that so much that the law requires as a prerequisite to picketing was ignored in this case that respondents are entitled to no relief at the hands of this or any court. It follows that certiorari should be, and is hereby, granted and the judgment appealed from is quashed.

It is so ordered.

HOBSON, DREW, THORNAL and O'CONNELL, JJ., CONCUR

THOMAS and ROBERTS, JJ., not participating.

Appendix B

HOTEL	April 3	April 14	April 17	April 18	April 28-30	May 5	May 6	May 9	May 10	May 11	May 12	May 16	May 25	May 27	May 28	May 29	May 31	June 1	June 2
Saxony	Strike & Picketing (R. 6, 44, 233)	Complaint Filed (R. 1-10)				Order desy. Temp. Injunction (R. 10)		Answer (R. 25-29)					Secret Ballot Election (R. 44-52)	**Sup. Ct. Opinion & Judgment (R. 16-20)**	Prelim. Injunction (R. 31-32)				
Sans Souci			Strike & Picketing (R. 102, 238)	Complaint Filed (R. 79)	Hearing (R. 11-15)			Answer (R. 90)		Order desy. Temp. Injunction (R. 89)		Petition for Cert. (R. 263-269)	Secret Ballot Election (R. 246-253)					**Sup. Ct. Opinion & Judgment (R. 272-273)**	Prelim. Injunction (R. 98) Motion to Vacate (R. 100)
Sherry Frontenac			Strike & Picketing (R. 527-9, 202, 238)	Complaint Filed (R. 524)	Hearing (R. 11-15)			Answer (R. 535)		Order desy. Temp. Injunction (R. 534)		Petition for Cert. (n.p.)	Secret Ballot Election (R. 246-253)					**Sup. Ct. Opinion & Judgment (R. 550-553)**	Prelim. Inj. (R. 543) Motion to Vacate (R. 545)
Lombardy							Strike & Picketing (R. 581-617)		Complaint Filed (R. 577)		Answer (R. 585)		Secret Ballot Election (R. 624-628)				Hearing (R. 593-646)		Restraining Order (R. 646)
Miami Colonial													Secret Ballot Election (R. 732-748)		Strike (R. 681) Complaint (R. 659) Hearing (R. 667-781)	Restraining Order (R. 666)			
Nautilus																			
Delmonico													Secret Ballot Election (R. 837-843, 866, 868)	Picketing Begins (R. 826, 854, 866)					
President Madison																	Picketing (R. 854)		
Robert Richter													Secret Ballot Election (R. 992)						
Martinique													Secret Ballot Election (R. 1078)						
Versailles													Secret Ballot Election (R. 330)						
San Marino													Secret Ballot Election (R. 481-435)						

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HOTEL	June 1	June 2	June 3	June 4	June 5	June 6	June 7	June 8	June 9	June 10	June 11	June 15	June 16	June 17	June 24	June 28	July 6	July 9	July 11	July 27	Aug. 7
Saxony																Supp. Ans. (Commerce) (R. 33)					
Sans Souci	**Sup. Ct. Opinion & Judgment (R. 272-273)**	Prelim. Injunction (R. 98) Motion to Vacate (R. 100)		Hearing (R. 109-211)							Hearing (Cont.) (R. 211-262)			Order Vacating Temp. Inj. (R. 101)	Supersedeas (R. 274)	Supp. Ans. (Commerce) (R. 284)					
Sherry Frontenac	**Sup. Ct. Opinion & Judgment (R. 550-553)**	Prelim. Inj (R. 543) Motion to Vacate (R. 545)		Hearing R. 109-211)							Hearing (Cont.) (R. 211-262)		Order Vacating Inj. (R. 546)		Supersedeas (R. 554)	Supp. Ans. (Commerce) (R. 565)					
Lombardy		Restraining Order (R. 646)														Supp. Ans. (Commerce) (R. 648)					
Miami Colonial			Answer (R. 782)			Motion to Vacate (R. 789)				Order Denying Motion to Vacate (R. 791)											
Nautilus			Picketing Begins (R. 816)	Complaint Served (R. 816)	Picketing Ceases (R. 816)	Complaint Filed (R. 803)							Answer (R. 814)	Prelim. Injunction (R. 815)							
Delmonico									Complaint Filed (R. 825)			Answer (R. 831) Hearing (R. 852-873)	Temp. Restraining Order (R. 844)			Supp. Ans. (Commerce) (R. 845)					
President Madison									Complaint Filed (R. 881)			Answer (R. 889) Hearing (R. 852-873)	Temp. Restraining Order (R. 895)			Supp. Ans. (Commerce) (R. 896)					
Robert Richter							Picketing (R. 918-992)		Complaint Filed (R. 913)					Prelim. Injunction (R. 994)		Supp. Ans. (Commerce) (R. 996)					
Martinique								Picketing (R. 1048-1078)		Complaint Filed (R. 1045)			Answer (R. 1062)	Prelim. Injunction (R. 1080)		Supp. Ans. (Commerce) (R. 1082)					
Versailles											Picketing (R. 304, 379)	Complaint Filed (R. 297)				Supp. Ans. (Commerce) (R. 334)	Answer (R. 315)				
San Marino												Picketing (R. 406, 455, 481)		Complaint Filed (R. 403)		Answer (R. 412) Supp. Ans. (R. 431)	Hearing (R. 437-499) Oral ruling (R. 500-501)	Order Enjoining Picketing & Directing Election (R. 434)	Sup. Ct. Opinion on Supersedeas (R. 502)	Petition for Cert. (R. 505)	

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HOTEL	July 27	Aug. 7	Sept. 2	Sept. 16	Sept. 22	Sept. 26	Oct. 19	Nov. 20	Dec. 5	Dec. 14	Dec. 19	Dec. 20	Dec. 23	Jan. 5	Jan. 9	Jan. 13	Feb. 23	Feb. 27	March 15	HOTEL
Saxony								Stip. re. Final Hearing (R. 35) Final Decree (R. 51)											**Sup. Ct. Opinion & Judgment (R. 57)**	Saxony
Sans Souci							**Sup. Ct. Opinion & Judgment (R. 277, 283)**	Stip re. Final Hearing (R. 287) Final Decree (R. 291)											**Sup. Ct. Opinion & Judgment (R. 295-6)**	Sans Souci
Sherry Frontenac							**Sup. Ct. Opinion & Judgment (R. 557, 563)**	Stip re. Final Hearing (R. 567) Final Decree (R. 570)											**Sup. Ct. Opinion & Judgment (R. 547-5)**	Sherry Frontenac
Lombardy											Stip. re Final Hearing (R. 650) Final Decree (R. 654)								**Sup. Ct. Opinion & Judgment (R. 657-8)**	Lombardy
Miami Colonial									Stip re. Final Hearing (R. 794) Final Decree (R. 797)										**Sup. Ct. Opinion & Judgment (R. 801-2)**	Miami Colonial
Nautilus								Stip re. Final Hearing (R. 819) Final Decree (R. 821)											**Sup. Ct. Opinion & Judgment (R. 823-5)**	Nautilus
Delmonico								Stip re. Final Hearing (R. 847) Final Decree (R. 873)											**Sup. Ct. Opinion & Judgment (R. 878-879)**	Delmonico
President Madison								Stip re. Final Hearing (R. 898) Final Decree (R. 903)											**Sup. Ct. Opinion & Judgment (R. 908-9)**	President Madison
Robert Richter														Stip re Final Hearing (R. 1000) Final Decree (R. 1001)					**Sup. Ct. Opinion & Judgment (R. 1006-1007)**	Robert Richter
Martinique												Stip. re. Final Hearing (R. 1084) Final Degree (R. 1085)							**Sup. Ct. Opinion & Judgment (R. 1090-1091)**	Martinique
Versailles			Amended Complaint (R. 337)	Hearing (n.p.)	Order Denying Temp. Inj. (R. 379)	Petition for Cert. (R. 380)				Sup. Ct. Opinion & Judgment (R. 388, 389)	Prelim. Injunction (R. 391)			Stip. re. Final Hearing (R. 393)	Final Decree (R. 394)				**Sup. Ct. Opinion & Judgment (R. 399)**	Versailles
San Marino															Sup. Ct. Opinion & Judgment (R. 507-512)		Stip. re. Final Hearing (R. 514)	Final Decree (R. 515)	**Sup. Ct. Opinion & Judgment (R. 520-521)**	San Marino

Sup. Ct. Opinion on Petition for Cert. (R. 505)
Supersedeas (R. 502)